

Public Space Protection Order for Dogs

Angela Lax, Cabinet Member for Legal & Regulatory Services

Date: 25th February 2020

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Key Decision? YES NO (delete as appropriate)

Local Ward

Members Affects all Wards



REGULATORY AND LICENSING COMMITTEE

1. Executive Summary

- 1.1 Public Space Protection Orders (created under the Anti-social Behaviour, Crime and Policing Act 2014) can cover a range of anti-social behaviours.
- 1.2 In relation to dogs, anti-social behaviour can include matters such as failing to pick up fouling, not having dog(s) on a lead in certain circumstances or simply allowing a dog to enter an area which it is inappropriate for them to be.
- 1.3 This report considers the range of possible anti-social behaviours which those in charge of dogs can commit. It further considers whether there is evidence of a need to control these behaviours within the Lichfield District and offers proposals in relation to a Public Space Protection Order to cover this.

2. Recommendations

- 2.1 That the Committee agrees that a statutory consultation exercise takes place relating to a proposed PSPO covering:
 - Picking up dog fouling throughout the District
 - Banning dogs from entering any fenced off children's play areas on public land.
 - A requirement for dog walkers to have with them an appropriate receptacle to pick up any dog waste.

Exact wording of these proposals can be seen at Appendix A.

- 2.2 That if no significant objection emerges as part of the consultation and no issues arise as a consequence of legal compliance checks, the Head of Regulatory Services, Housing and Wellbeing be given delegated authority to create the Public Space Protection Order, in consultation with the Committee Chairman and Vice Chairman, as soon as possible following the end of the statutory consultation. If significant objection *does* occur then the matter will be referred back to this Committee for a final decision on how to proceed.

3. Background

- 3.1 Public Space Protection Orders (PSPOs) were created by the Anti-social Behaviour, Crime and Policing Act 2014 as a replacement for various powers, including Dog Control Orders.

- 3.2 The Council's only Order currently relates to a requirement to pick up dog fouling. This Order was automatically created in October 2017 when the then current Dog Control Order became a PSPO. All PSPOs are limited to a three year duration before they should be reviewed, hence the current PSPO requiring dog fouling to be picked up by dog walkers is due for review before October 2020.
- 3.3 The Council's Environmental Crime Strategy was approved at the Regulatory and Licensing Committee in July 2018. The minutes of that meeting highlight the suggestion by a Members Task Group that a new PSPO is consulted upon to require dog walkers to carry an appropriate receptacle (commonly a dog bag) to pick up dog faeces.
- 3.4 As part of any statutory consultation on the introduction of a new PSPO, the Council is required to consult with the Police, especially in view of the fact that Police Constables would be authorised to enforce any PSPO that may be created. At the current time the consultation process has stalled.
- 3.5 More recently during 2019, an enquiry from a member of the public in relation to the Council's stance on banning dogs from certain areas or requiring dogs to be on leads anywhere in public has prompted a further more detailed review of what is possible in terms of dog related PSPOs and what would be appropriate for the District of Lichfield.

4. Comparisons with other Local Authorities

- 4.1 Other Staffordshire and nearby West Midlands Authorities have various PSPOs relating to dogs.
- 4.2 As would be expected, all Authorities include the removal of dog faeces in their Orders.
- 4.3 30% of Authorities had a PSPO relating to having a means to pick up fouling.
- 4.4 Most Authorities exclude dogs from fenced off children's play areas.
- 4.5 One Authority requires dogs to be on a lead on carriageways, footpaths and verges within 3m of carriageways throughout the district. Others require dogs to be on leads in specified locations throughout the district.
- 4.6 It is worth pointing out that any PSPO which is created must be enforced and the Council should consider whether the necessary resources exist to enforce any PSPO which is set up. Failure to enforce can be counterproductive with members of the public clearly ignoring requirements and thus weaken any case for taking legal action on those who are caught not complying. At the current time we have two officers carrying out a range of duties for which PSPO enforcement is one. Their time equates to a total of 0.6 of one Full Time Equivalent officer.

5. Proposals

- 5.1 Whilst consideration must be given to the need for any order, dog fouling continues to be a problem throughout the UK and our District is no exception, in spite of significant reductions in the last few years. It is therefore considered appropriate to continue with an Order which requires those in charge of dogs to pick up their dog's faeces.
- 5.2 Whilst feedback from other Council Departments has not suggested a *significant* problem with dogs entering children's play areas, it is perfectly reasonable to put restrictions in place to ensure that dogs do not enter these areas. This would prevent children, who may be fearful of dogs, from being approached by them and also remove the possibility of any dog fouling in an area specifically designed for children to play.

- 5.3 Enforceability is an important consideration and where play areas are not fenced off it can introduce difficulties where a dog has walked onto a play area despite the walker's best efforts. Whilst it may be argued that a dog walker can put the dog on a lead, it nevertheless introduces the potential for some mitigation in relation to any court case. There is also the question of the boundary to the Order around the play area and what point on the ground the Order actually comes into effect. As a result, it is proposed that if Members agree that a PSPO banning dogs from play areas on public land across the District is appropriate, this is only put in place where the play areas have a fence around them. These areas are as follows:
- Beacon Park – junior play area only
 - Darnford Park
 - Saddlers Wood
 - Stowe Pool – junior play area only
 - Stychbrook Park
 - Darwin Park
 - Chase Terrace
 - Burntwood Park
 - Hawksyard
- 5.4 The proposed dog bag related PSPO is in place at a number of other authorities. Dog fouling meets the criteria for a PSPO and it naturally follows that it is reasonable for any person in charge of a dog to have the means to pick up, should their dog foul.
- 5.5 The proposed wording of the PSPO covering these three elements can be seen in Appendix A.

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| Alternative Options | 1. Consideration has been given to other typical dog related PSPOs such as requiring dogs to be on leads on footpaths next to roads. The evidence base for the need for these has been lacking, with almost no complaints from the public coming in about additional matters for which a PSPO can be created. Furthermore, the Council must strike a balance between the rights of the public to use facilities such as parks and public spaces without hindrance from dogs against the rights of dog owners to have the freedom to walk and exercise their dogs without unjustified restrictions. |
| Consultation | 1. Consultation has previously been undertaken with Members including an Environmental Crime task group. A consultation exercise is required by law prior to any Order being put in place and should any of the proposals see significant objections the matter will return to this Committee for a final decision on approval. |
| Financial Implications | 1. Enforcement of any new PSPO will be undertaken within current resources and budgets. 2. Income from fixed penalties is not predicted to be significant enough to warrant consideration. |
| Contribution to the Delivery of the Strategic Plan | 1. Shaping Place: to keep it clean, green and safe. |

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| Equality, Diversity and Human Rights Implications | <ol style="list-style-type: none"> 1. As outlined in the draft of the proposed order at Appendix A, we must consider the rights and freedoms set out in Articles 10 and 11 of the Convention on Human Rights and it is considered that the restrictions on these rights and freedoms an Order would introduce are lawful, necessary and proportionate. 2. Exceptions are made in relation to these for assistance dogs and some with physical or mental impairments. |
| Crime & Safety Issues | <ol style="list-style-type: none"> 1. It is considered that the proposal will positively impact on our duty to prevent crime and disorder within the District (Section 17 of the Crime and Disorder Act, 1988). Failure to comply with a PSPO is a criminal offence. |
| GDPR/Privacy Impact Assessment | <ol style="list-style-type: none"> 1. Not considered necessary. |

| | Risk Description | How We Manage It | Severity of Risk (RYG) |
|---|--|--|------------------------|
| A | Environment | Maintain an Order in place at all times to ensure enforcement can take place | Green (tolerable) |
| B | Legal - Appeal to the implementation of a PSPO | Ensure that the Order is legally robust by consultation with the Council's Legal team. | Green (tolerable) |
| C | | | |
| D | | | |
| E | | | |

Background documents

Anti-social behaviour, Crime and Policing Act 2014

LGA – Public Space Protection Orders – Guidance for Councils (Feb 2018)

Relevant web links

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

<https://www.local.gov.uk/public-spaces-protection-orders-guidance-councils>